CASE NO. 92-1705

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

SUSAN H. MALONEY,

Petitioner

v.

JOSEPH SALAFIA, ET AL

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT JOSEPH SALAFIA (INDIVIDUALLY) IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

LIST OF PARTIES TO THE PROCEEDINGS

Susan H. Maloney, Petitioner

Joseph Salafia, individually, Respondent

Joseph Salafia, Deputy Sheriff,
New Haven County Sheriff's
Department, Respondent

State of Connecticut, Middlesex County
Sheriff's Department, Respondent

Daniel B. Horwitch, individually and in
his official capacity as Statewide
Bar Counsel, Respondent

Maureen Hogan, individually and in her
official capacity of Manager of Court
Transcript Services, Respondent

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JURISDICTION

1. Judgment entered by United States Court of Appeals for the Second Circuit June 30, 1992.

2. Petition for Rehearing En Banc denied September 13, 1992.

3. Petition for Writ of Certiorari received by Respondent Salafia, individually, April 30, 1993.

STATEMENT OF CASE

Petitioner, Susan Maloney (hereinafter Petitioner) seeks review of decisions of the United States Court of Appeals for the Second Circuit. Petitioner, as plaintiff in the United States District Court for the District of Connecticut, brought an action against respondents herein, Joseph Salafia in his individual capacity and in his official capacity as a New Haven County deputy sheriff, the State of Connecticut, Middlesex County Sheriff's Department, Daniel Horwitch in his individual capacity and in his official capacity as Connecticut Statewide Bar Counsel, and Maureen Horgan in her individual capacity and in her official capacity as Manager of Connecticut Court Transcript services. Said action was

commenced on September 13, 1990 and the complaint was thereafter amended on February 19, 1991.

Petitioner alleged, in her ambiguous and confusing complaint, her civil rights were violated when she was required to move, pursuant to a court order, from real property, in which she claimed an ownership interest at 60 Park Place in Meriden, Connecticut on January 4, 1984, and she sought damages. Petitioner also sought a declaratory judgment that Salafia, in serving legal process as a deputy sheriff, violated 18 United States Code § 1961 et seq., Connecticut General Statutes § 53-939 et seq., Connecticut General Statutes § 42-110a et seq., and committed fraud, assault and trespass against her. She also sought mandamus relief against

other Respondents.

This action arose in retaliation for an ejectment order entered by the Connecticut Superior Court, Housing Session for the Judicial District of New Haven on September 23, 1983 requiring Petitioner to vacate the above referenced premises. Petitioner stayed said ejectment by obtaining an ex parte injunction on December 1, 1983. Said injunction was dissolved on December 16, 1983.

On December 27, 1983, Respondent Salafia, in his official capacity as deputy sheriff, notified Petitioner she was required to vacate the premises by January 4, 1984. She did vacate the premises sometime thereafter.

Respondent Salafia heard nothing further from Petitioner until process

was served on him more than six years after the alleged incidents occurred.

Respondent Salafia, individually, filed a motion to dismiss Petitioner's complaint, dated June 27, 1991. The trial court, Peter C. Dorsey, Judge, held that: Petitioner's civil rights claims were barred by the Connecticut statute of limitation, Conn. Gen. Stat. § 52-595; Petitioner failed to state a valid RICO claim; Petitioner's request for mandamus relief was not appropriate since Respondent Salafia, individually, was not an officer of the United States; and the state law claims were dismissed because the exercise of pendent jurisdiction was not required. This decision was rendered on December 5, 1991 and judgment entered on December 6, 1991.

In September, 1991, before the trial court dismissed this matter, Petitioner had filed a request for discovery in violation of the Order on Pretrial Deadlines in that it was served more than six months after the filing of the complaint. Respondent Salafia, individually, objected to said request, but said objection was not heard before the ruling on pending motions entered, dismissing said action, on December 5, 1991. Judgment entered thereon on December 6, 1991.

Petitioner eventually filed a notice of appeal on December 21, 1991. On June 30, 1992 the U.S. Court of Appeals for the Second Circuit upheld the trial court's decision. In fact, Petitioner raised no issue on appeal against Respondent Salafia in his

individual capacity. Petitioner's petition for rehearing en banc was denied on September 9, 1992.

Counsel representing Respondent Salafia in his individual capacity received notice of the petition for writ of certiorari on April 30, 1993, more than seven months after her petition for rehearing was denied.

In her petition for writ of certiorari, Petitioner once again raises no issues against Respondent Salafia in his individual capacity. Petitioner has failed to file her petition for writ of certiorari within 90 days of entry of judgment or denial of request for review and has failed to state any valid reasons why review of her petition should be granted.

SUMMARY OF ARGUMENT

1. The Petitioner has raised no issues against Respondent Salafia, individually. Her petition speaks only of actions allegedly taken by Salafia in his official capacity as deputy sheriff in evicting Petitioner from the premises where she was living, for allegedly conspiring to defraud her of her property and for her claimed damages. She has failed to allege that Respondent Salafia, individually, had any responsibilities for any of her alleged injuries or damages. The petition should be denied for this reason.

2. Petitioner has failed to file her petition within 90 days of judgment or date of decision on her petition for rehearing en banc. Judgment entered on June 30, 1992 and said petition for

rehearing en banc was denied on September 13, 1992. Pursuant to Rule 13.3 of the Rules of this court, this petition should not be accepted.

3. Petitioner has set forth no valid reasons for having this court review the decisions below. Petitioner has alleged no conflicts between the decision of the United States Court of Appeals for the Second Circuit and other United States Appellate Courts. She has set forth no grounds showing that the decision of the Appellate Court was in error. Her petition for writ of certiorari should thus be denied.

ARGUMENT

1. THE PETITIONER HAS RAISED NO ISSUES FOR REVIEW AGAINST RESPONDENT JOSEPH SALAFIA, INDIVIDUALLY.

In her STATEMENT OF CASE in her petition for writ of certiorari, the Petitioner makes allegations regarding actions committed by Respondent Salafia in his official capacity as a deputy sheriff. All legal conclusions stated in the remainder of her petition are based on the factual allegations stated above, with Respondent Salafia acting as a deputy sheriff.

Nowhere does she allege any wrong committed by Respondent Salafia, individually.

Since Petitioner has made no allegations of any wrong committed by Respondent Salafia, individually, her

petition for review should be denied against him. In fact, she abandoned any claim against Respondent Salafia, individually by failing to raise any issue against him on appeal. Larkin v. United Ass'n of Journeymen, 338 F.2d 335 (1st Cir. 1964) cert. denied 380 U.S. 975 (1965).

2. PETITIONER HAS FAILED TO FILE THIS PETITION FOR WRIT OF CERTIORARI WITHIN THE TIME ALLOWED BY LAW.

Rule 13 of the rules of the Supreme Court of the United States requires a petitioner to file the petition for writ of certiorari within 90 days of the date of judgment. Judgment in the U.S. Court of Appeals for the Second Circuit entered on June 30, 1992, and said court denied Petitioner's petition for rehearing en banc on September 9, 1992.

Petitioner sought review in this court by filing a petition for writ of certiorari, a copy being received by counsel for Respondent Salafia, individually on April 30, 1993, well over 90 days from the last act by the Court of Appeals. Said petition should be dismissed as it is not timely filed. See, e.g. United States ex rel Coy v. United States, 316 U.S. 342, 346 (1942).

In fact, Petitioner had filed two previous petitions with the clerk of this court, but failed to follow the rules setting forth proper fees and form.

3. THE DECISION OF THE TRIAL COURT, AS UPHELD BY THE COURT OF APPEALS, WAS PROPER.

The United States Court of Appeals held that Petitioner's civil rights

claims against Respondent Salafia, individually were barred by the Connecticut three year statute of limitations for tort actions, Conn. Gen. Stat. § 52-577. See Wilson v. Garcia; 471 U.S. 261 (1985).

Said action was not instituted in District Court until January, 1990, more than six years after the acts occurred that Petitioner claimed harmed her. The Appellate Court correctly reasoned that even if the statute of limitations were tolled pursuant to Conn. Gen. Stat. § 52-595, more than three years passed between accrual and the institution of her action.

Petitioner's Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. (RICO) claim was dismissed because no predicate

RICO offense, as required by 18 U.S.C. § 1961, was alleged by Petitioner in her complaint, and she also failed to allege that Respondent Salafia, in his individual capacity, was engaged in interstate or foreign commerce as required by 18 U.S.C. § 1962. The Appellate Court correctly upheld this dismissal.

Mandamus relief was denied because Respondent Salafia, individually, is not a federal officer. 28 U.S.C. § 1361.

Petitioner failed to state any reasons in her petition as to why the Appellate Court's decision should be subject to review. The decision was not in conflict with those of other United States Courts of Appeals, and is logically sound and well reasoned. The Petitioner simply waited too long to

file her action, and sought to hold Respondent Salafia, individually, liable for actions for which no prima facie case was alleged.

CONCLUSION

The Petitioner has failed to raise any issues against Respondent Salafia, individually in her confusing and conflicting petition for writ of certiorari. She has failed to file said petition in a timely manner. In addition, she has set forth no valid reasons for this court to review the decision below.

For these reasons, Respondent Salafia, individually, respectfully requests that Susan Maloney's petition for writ of certiorari be denied as against him.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief in Opposition to Petition for Writ of Certiorari by Respondent Joseph Salafia was served by U.S. mail, first class postage prepaid on the following parties on May 26, 1993:

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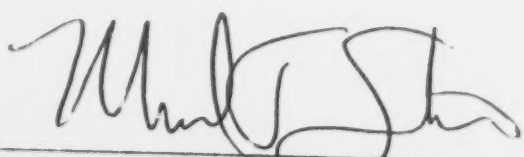
By: 

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